

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1. TIFFANIE MCGALLIARD,)	
)	
Plaintiff,)	
)	
v.)	Case No. 5:17-cv-01213-R
)	
)	
1. COMTECH DESIGN, PRINT)	
& MAIL, LLC, a domestic)	
limited liability company)	
)	
Defendant.)	

**DEFENDANT COMTECH DESIGN, PRINT & MAIL, LLC’S
MOTION TO DISMISS AND BRIEF IN SUPPORT**

Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, Defendant, Comtech Design, Print & Mail, LLC, (“Comtech”), respectfully requests that this matter be dismissed due to Plaintiff’s failure to prosecute and due to the Plaintiff’s failure to comply with this Court’s Order [Doc. No. 14]. In support of its Motion, Comtech submits the following brief.

1. On March 12, 2018, Plaintiff’s attorneys filed a Motion to Withdraw from this case [Doc. No. 13].

2. On March 13, 2018, the Court granted the Motion and allowed Plaintiff’s attorneys to withdraw. [Doc. No. 14] The Court further ordered that the Plaintiff must within 30 days from the date of the Order either enter her appearance *pro se*, or secure new counsel. The Court noted that a failure of a party to prosecute or defend the case could result in dismissal.

3. More than 30 days have passed since the Court ordered Plaintiff to enter an appearance by substitute counsel or *pro se*. However, Plaintiff has neither appeared *pro se* nor secured new counsel. Nor has Plaintiff contacted Comtech's counsel or sought any extension of time from the Court.

4. Comtech respectfully requests that the Court dismiss Plaintiff's case for failure to prosecute her case and for failure to comply with a court order. Rule 41(b) of the Federal Rules of Civil Procedure provides that "[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." Further, although *pro se* litigants are held to less stringent standards than licensed attorneys, *pro se* litigants are required to follow the "same rules of procedure governing other litigants." Hardage v. James, No. 00-7019, 2000 WL 565057, at *1 (10th Cir. 2000) (citing Link v. Wabash R.R. Co., 370 U.S. 626, 630-32 (1962)).

5. In the case at bar, Plaintiff has failed to obtain counsel or to file a paper with the Court indicating her intent to proceed *pro se* by the deadline established by the Court. Accordingly, as Plaintiff has failed to comply with an Order from this Court, and as Plaintiff has failed to prosecute his case, this matter should be dismissed. See Garrett v. Esser, No. 02-5050, 2002 WL 31839853, at **1 (10th Cir. 2002); Hardage, 2000 WL 565057, at *1 (stating that district courts have "inherent power to dismiss an action with prejudice for inexcusable failure to prosecute.").

Respectfully Submitted,

/s/ Nathan L. Whatley

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that on April 19, 2018, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing, and mailed a true and correct copy to Plaintiff via first class mail at the following address:

Tiffanie McGalliard
2813 Greenfield Drive
Edmond, OK 73012

/s/Nathan L. Whatley

Nathan L. Whatley